

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 73 of 2002
with
SPECIAL CRIMINAL APPLICATION No 74 of 2002
with
SPECIAL CRIMINAL APPLICATION No 75 of 2002
with
SPECIAL CRIMINAL APPLICATION No 76 of 2002
with
SPECIAL CRIMINAL APPLICATION No 77 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?
1 to 5 NO

M/S GOENKA FABS PRIVATE LTD

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application Nos. 73 to 77 of 2002
MRS SHILPA J UNWALLA for Petitioner No. 1-2
MR ARUN D OZA PUBLIC PROSECUTOR for Respondent No. 1
MR HARIN P RAWAL with MR CHIRAG R KOTHARI
for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 30/10/2002

C.A.V. JUDGEMENT

1. The prayer in these petitions under Section 482 of the Code of Criminal Procedure, 1973 ('the Cr.P.C.' for short) and Articles 226/227 of the Constitution was restricted to quashing of the order of the learned Judicial Magistrate, First Class at Sanand, whereunder, summons were issued in original Criminal Case Nos.443 of 1999, 444 of 1999, 445 of 1999, 446 of 1999 and 447 of 1999 filed for dishonour of cheques admittedly issued by the petitioner. The applications of the petitioner for dropping of the proceedings and the revision applications preferred from rejection thereof are rejected. Not pressing the other grounds at this stage, after some arguments, the learned counsel for the petitioner pressed only the ground that the mandatory provisions of Section 200 of the Cr.P.C. were violated insofar as the complainant was not examined upon oath before issuance of process.

2. The learned counsel for the petitioner Ms.Unwala relied upon the judgment of this Court (Coram: A.L.Dave, J.) in Criminal Misc. Application No.7333 of 2000 in which the impugned order was quashed in similar facts with a direction to proceed with the complaint in accordance with law. The learned counsel for the respondent Mr.H.P.Rawal gave up the effort at distinguishing the cases in which, without examining on oath the complainant, the investigation was ordered under Section 202 of the Cr.P.C. because that might necessitate the reference of these matters to a Larger Bench at the cost of considerable time even as more than three years have already elapsed after the original impugned orders. Therefore, he conceded that, without prejudice to his contentions, similar order quashing the issuance of process may be made with a direction to the learned Judicial Magistrate, First Class to proceed with the complaint de novo in accordance with law.

3. Accordingly, the petitions are allowed and the orders to issue process in Criminal Cases Nos.443 of 1999, 444 of 1999, 445 of 1999, 446 of 1999 and 447 of 1999 made by the learned Judicial Magistrate, First Class at Sanand are hereby set aside with the direction to

proceed with the complaints in accordance with law after complying with the provisions of Section 200 of the Cr.PC. Since the interlocutory proceedings and revision therefrom have already consumed more than three years, the proceedings in the trial Court should be taken up and carried on as expeditiously as practicable and the loss of time should also be a factor to be taken into account at the time of making the final orders. With these observations and directions, Rule is made absolute with no order as to costs. R & P shall be returned forthwith.

Sd/-

(D.H.Waghela,J.)
(KMG Thilake)